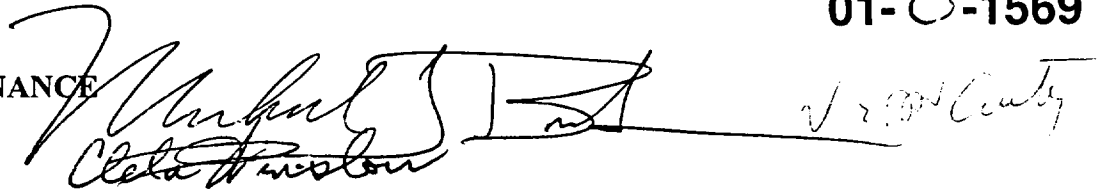


AN ORDINANCE

Handwritten signatures and stamps. The first signature is "Michael J. [unclear]" and the second is "Celia [unclear]". To the right, there is a stamp that reads "V 2 (3rd County)".

**AN ORDINANCE AUTHORIZING THE MAYOR TO  
EXECUTE A FRANCHISE AGREEMENT WITH  
EVOLUTION NETWORKS SOUTH, INC. FOR THE  
PROVISION OF TELECOMMUNICATIONS SERVICES  
USING PUBLIC RIGHT-OF-WAY; AND FOR OTHER  
PURPOSES**

**WHEREAS,** Evolution Networks South, Inc. has applied for a franchise to provide telecommunications services on, under, over and through the public right-of-way of the City; and

**WHEREAS,** Evolution Networks South, Inc. has negotiated a franchise agreement with the City which provides such access and preserves the rights of the City until such time as a comprehensive ordinance is enacted;

**NOW, THEREFORE THE COUNCIL OF THE CITY OF ATLANTA, GEORGIA,  
HEREBY ORDAINS AS FOLLOWS:**

**SECTION 1:** That the Mayor be and is hereby authorized to execute a franchise agreement in substantially similar form as attached, with Evolution Networks South, Inc. for use of the public right-of-way for telecommunications purposes.

**SECTION 2:** That such franchise agreement shall expire and terminate on March 31, 2003.

**SECTION 3:** That Evolution Networks South, Inc. shall pay a franchise fee of three percent (3%) of gross revenues.

**SECTION 4:** That the City Attorney shall prepare a franchise agreement document, which shall be approved by the city Attorney as to form.

**SECTION 5:** That said franchise agreement shall not be binding on the City until approved by the Mayor and delivered to Evolution Networks South, Inc.

## **FRANCHISE AGREEMENT**

This **AGREEMENT**, executed as of the \_\_\_\_ day of \_\_\_\_\_, 2001 (the "Effective Date"), by and between **THE CITY OF ATLANTA, GEORGIA** (hereinafter referred to as the "City"), and **Evolution Networks South, Inc.**, a Delaware corporation, duly organized and validly existing under the laws of the State of Georgia, whose principal place of business is located at 900 Ashwood Parkway, Suite 400, Atlanta, Georgia 30338 (hereinafter referred to as the "Grantee").

### **W I T N E S S E T H:**

**WHEREAS**, the City has the authority pursuant to applicable State and local laws to grant franchises and other authorizations for the use and occupancy of the Streets (as hereinafter defined);

**WHEREAS**, consistent with applicable law, the City desires to manage the Streets and obtain fair and reasonable compensation from Telecommunications Providers (as hereinafter defined) for the use of the Streets on a non-discriminatory basis;

**WHEREAS**, the Grantee desires to obtain a franchise to use and occupy the Streets for the purpose of constructing and maintaining a Telecommunications System (as hereinafter defined) and providing Telecommunications Services (as hereinafter defined) on a competitively neutral and nondiscriminatory basis in accordance with the Federal Telecommunications Act of 1996, 47 U.S.C. § 151 et. seq.;

**WHEREAS**, the City intends to exercise, to the fullest extent permitted by applicable law, its authority with respect to the management of the occupation and use of the Streets in connection with the provision of Telecommunication Services;

**WHEREAS**, the Grantee has requested that the City grant it a telecommunications franchise to permit the Grantee to maintain a Telecommunications System in the streets;

**WHEREAS**, in response to the Grantee's request, the City has agreed to grant a telecommunications franchise to the Grantee and enter into this Agreement ; and

**WHEREAS**, the Grantee understands and acknowledges that if Grantee shall be subject to the requirements governing the use and occupance of the streets as set out by City Ordinance;

**NOW, THEREFORE**, in consideration of the foregoing clauses, which clauses are hereby made a part of this Agreement, the mutual covenants and agreements herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby covenant and agree as follows:

## **ARTICLE 1.**

### **DEFINITIONS**

1.1. Definitions. The following terms, as used in this Agreement, have the following meanings, with all terms defined in this Article 1 in the singular to have the correlative meaning when used in the plural and vice versa:

1.1.01. "Affiliated Person" means each Person who falls into one or more of the following categories: (i) each Person having, directly or indirectly, a Controlling Interest in the Grantee; (ii) each Person in which the Grantee has, directly or indirectly, a Controlling Interest; (iii) each officer, director, joint venturer or joint venture partner of the Grantee; and (iv) each Person, directly or indirectly, controlling, controlled by, or under common Control

with, the Grantee; provided that "Affiliated Person" shall in no event mean the City or any creditor of the Grantee solely by virtue of its status as a creditor and that is not otherwise an Affiliated Person by reason of owning a Controlling Interest in, being owned by, or being under common ownership, common management or common Control with, the Grantee.

1.1.02. "Agreement" means this Franchise Agreement, together with all Appendices attached hereto and all amendments or modifications thereto.

1.1.03. "Cable Services" means "cable services" as defined in the Communications Act of 1934, as amended by the Cable Communications Policy Act of 1984, the Cable Television Consumer Protection and Competition Act of 1992, and the Telecommunications Act of 1996, and as they may be further amended from time to time (the "Cable Act"). In the event that "cable services" is no longer defined in the Cable Act or the definition in the Cable Act otherwise becomes inapplicable, "Cable Services" shall mean "cable services" as defined in the Cable Act immediately prior to such term no longer being defined in the Cable Act or such definition otherwise becoming inapplicable.

1.1.04. "City" means the City of Atlanta, Georgia.

1.1.05. "Code" means the Code of Ordinances of the City, as amended from time to time.

1.1.06. "Control" or "Controlling Interest" means actual working control in whatever manner exercised, including, without limitation, working control through ownership, management, debt instruments or negative control, as the case may be, of the Grantee or the Equipment in the Streets. A rebuttable presumption of the existence of Control or a Controlling Interest shall arise from the beneficial ownership, directly or indirectly, by any Person, or group of Persons acting in concert, of more than twenty percent (20%) of any Person (which person or

group of Persons is hereinafter referred to as “Controlling Person). “Control” or “Controlling Interest” as used herein may be held simultaneously by more than one Person or group of persons.

1.1.07. “Customer” means any Person who uses the Telecommunications Services of the Grantee in the corporate limits of the City.

1.1.08. “Effective Date” means the date this Agreement was executed as set forth in the opening clause of this Agreement.

1.1.09. “Equipment” means any and all transmission facilities, poles, wires, electrical conductors, conduits, ducts, subways, manholes, fixtures, appliances and appurtenances that are used in connection with the provision of Telecommunications Services.

1.1.10. “FCC” means the Federal Communications Commission.

1.1.11. “Franchise” has the meaning set forth in Section 2.1 of this Agreement.

1.1.12. “Franchise Fee” has the meaning set forth in Section 4.1 of this Agreement.

1.1.13. “GPSC” means the Georgia Public Service Commission.

1.1.14. “Grantee” means Evolution Networks South, Inc.

1.1.15. “Gross Revenues” means all revenue, as determined in accordance that is received, directly or indirectly, by the Grantee and any Affiliated Person from or in connection with the provision of Telecommunication Services over the Grantee’s Telecommunications System in the established corporate limits of the City; provided that, Gross Revenue shall not include any franchise fees or any sales or excise taxes collected for direct

01-0-1569

(Do Not Write Above This Line)

AN ORDINANCE

*McColl*

*[Signature]*

AN ORDINANCE AUTHORIZING THE MAYOR TO EXECUTE A FRANCHISE AGREEMENT WITH EVOLUTION NETWORKS SOUTH, INC. FOR THE PROVISION OF TELECOMMUNICATIONS SERVICES USING PUBLIC RIGHT-OF-WAY; AND FOR OTHER PURPOSES

First Reading

Committee \_\_\_\_\_  
Date \_\_\_\_\_  
Chair \_\_\_\_\_  
Referred to \_\_\_\_\_

Committee

Date

Chair

Action:

Fav, Adv, Hold (see rev. side)

Other:

Members

Refer To

Committee

Date

Chair

Action:

Fav, Adv, Hold (see rev. side)

Other:

Members

Refer To

FINAL COUNCIL ACTION

☐ 2nd ☐ 1st & 2nd ☐ 3rd  
Readings

☐ Consent ☐ V Vote ☐ RC Vote

CERTIFIED

MAYOR'S ACTION

☐ CONSENT REFER

☐ REGULAR REPORT REFER

☐ ADVERTISE & REFER

☐ 1st ADOPT 2nd READ & REFER

☒ PERSONAL PAPER REFER

Date Referred

*9/17/01*

Referred To:

*City Utilities*

Date Referred

Referred To:

Date Referred

Referred To:

Refer To

Refer To

**Large  
document  
attached**